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Federal and New York State
Personal Income Taxes

Tax Problems Arising From
Real Estate Transactions

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A Comparison of the Principal Features of the Federal and New York State Personal Income Taxes*

BY H. E. BISCHOFF
(New York Office)

Although Article 16 of The Tax Law of the State of New York, dealing with the income tax on individuals, estates and trusts, is patterned after the Federal Internal Revenue Code, there are marked differences in certain essential features.

Unless the tax practitioner is conversant of these variances, which are expanded or reduced from time to time as new legislation is passed by either Congress or the State legislature, he may find to his embarrassment that he should have treated certain items differently in the New York tax return than in the Federal return.

For obvious reasons it will not be possible to cover, within the limits of this article, all the differences between the two laws. Accordingly an attempt is made to confine this discussion to some of the more essential features of both laws.

Some of the tax services dealing with the New York Personal Income Tax furnish a comparative chart of the Federal and New York laws.

GROSS INCOME

Salaries and Compensation: Salaries, wages, fees, etc. are in general taxable under both laws. This rule also applies to all federal, state and municipal employees. The special treatment under Sec. 107(a) of the Federal Code, of compensation for personal services rendered covering a period of 36 months or more, under which the taxpayer has an option so that the tax shall not be greater than the aggregate of the taxes which would have been paid if such amount had been included in gross income in each of the years included in the period, is not allowed under the State law.

Interest: Interest on farm loan bonds under the Federal Farm Loan Act on Treasury Bills and Certificates of Indebtedness and on U. S. Bonds and Treasury Bonds issued prior to March 1, 1941 is

*This address was delivered on March 25, 1947 at a meeting of the New York State Society of Certified Public Accountants, at the Engineering Auditorium, New York, N. Y.

exempt in whole or part from Federal income tax whereas interest on U. S. obligations issued after February 28, 1941 is subject to Federal tax. For New York State tax purposes interest on obligations of U. S. or its possessions or instrumentalities, whether issued before or after March 1, 1941, is exempt from tax. For both Federal and State tax purposes the interest on obligations of New York State or any political subdivisions thereof is exempt but interest on obligations of states and political subdivisions thereof other than New York is subject to New York tax but exempt from Federal tax. The taxpayer is required to report any non-taxable income in a special schedule provided therefor on the New York tax return (Schedule 7, page 2, Form 201).

Under a recent revision of the regulations the State procedure has been made to conform with the amendment of the Treasury regulations, after years of unsuccessful attempts to tax the increment over face value of amounts received under a life insurance policy paid in instalments rather than as a lump sum, by reason of the death of the insured. For both Federal and State purposes both lump sum and instalment payments of life insurance proceeds are now tax free. If, however, the proceeds are held by the insurer under an agreement to pay interest, the interest is taxable.

Dividends: Dividends received in cash or property are generally taxable under both laws. As to dividends received in stock, i.e. stock dividends, for Federal purposes these are treated as taxable unless such distribution cannot be taxed under the Sixteenth Amendment to the Constitution, e.g. where the dividend results in no change of the proportionate interest of each stockholder in the earnings or assets of the corporation. For State tax purposes stock dividends are exempt and the tax basis of the stocks on which the dividend was received must be adjusted.

Other Income: Recovery of bad debt deductions are excluded from gross income to the extent that the prior deduction did not result in an income tax benefit in any previous year for Federal purposes, whereas the State limits this exclusion to bad debts charged off and deducted in a taxable year not more than three years prior to the year in which the recovery is made.

Other types of recoveries are not specifically covered by the New York law and it would appear that a taxpayer may not take advantage of the "tax benefit rule" provided for Federal purposes, e.g. recoveries of taxes, losses, expenditures and accruals other than depreciation, depletion, amortization and amortizable bond premiums (Sec. 29.22(b) (12)-1 Reg. 111).

Deductions

Expenses General: Such expenses if incurred in business, in production or collection of income or in connection with income-producing property are allowable deductions for both Federal and State tax purposes.

Taxes: For the New York return the taxpayer may deduct all Federal taxes except federal income, estate and gift taxes. The Federal return does not allow after December 31, 1943 the deduction for Federal import duties, excise and stamp taxes except where such taxes fall in the category of business expenses. Some of the variances in the taxes allowed as deductions under the two laws are summarized below:

(1) New York State stamp transfer tax on security sales allowed as a tax deduction reducing normal income for Federal purposes but applied against the proceeds received affecting the capital gain or loss for New York purposes.

(2) New York State income and unincorporated business tax allowed as deduction for Federal but not for State tax purposes.

(3) Income taxes of states other than New York allowed as deduction for Federal but not for State tax purposes.

(4) Federal excise taxes not proved to be business expenses not allowable deductions for Federal purposes but allowable for State, e.g. Federal tax on admissions, telegraph, telephone, safe deposit box, etc.

Credit for Taxes Paid: Where a nonresident is subject to tax in the state or country where he resides he may credit against the tax on net income and capital gains payable in New York a proportionate part of the tax payable thereto provided such state or country has a similar reciprocal law or taxes its residents without taxing residents of New York.

Under the recent treaty with Great Britain (T.D. 5532) dividends received by U. S. taxpayers from British sources as to which tax has been withheld may be reported in the Federal return as income for the gross amount and the tax, with certain limitations, claimed as a credit against the U. S. tax or the dividends may be included in taxable income for the net amount, whichever is more advantageous.

For New York State purposes the taxpayer may not claim the credit against the tax but must report the net amount (gross dividend less standard tax) as taxable income.

As to dividends received from Canadian corporations the gross amount of the dividend must be reported without deduction of the Canadian tax for State tax pur-

poses although such taxes may be claimed as a deduction or credit for Federal purposes.

Losses: In general losses incurred in trade or business, in transactions entered into for profit, and from fire, storm, shipwreck, theft or other casualty are allowed under both laws. There are no provisions in the State law similar to the Federal provision disallowing losses (1) between members of the family or family controlled corporations, termed "in the family transactions" and (2) from sales of securities where within a period of 30 days identical securities were acquired, termed "wash sales."

As a result of the Tax Court decision in *Leland Hazard* (7 T.C. 372) it appears that the Treasury has receded from its previous position and now allows as an ordinary loss, instead of a capital loss, the loss on sale of real estate leased or rented by the taxpayer notwithstanding that his chief vocation is other than real estate, e.g. lawyer. The State Tax Commission has not fallen in line with the Treasury in this respect and is still holding that such losses do not affect income subject to normal tax.

Loss on sale of residence is not allowed for Federal purposes but treated as capital loss for State purposes. Where a gain is realized from the sale of a residence the State requires that the tax basis be reduced by depreciation, even though no deduction was allowed for such depreciation and the gain is taxable as a capital gain.

Losses on worthless securities are deductible as capital losses and not ordinary losses under both laws.

The net operating loss carry-overs and carry-backs provided under the Federal law are not provided for in the State law so that if the taxpayer sustains a business loss in one year the tax advantage of applying that loss against the profits of another year, with certain limitations, cannot be availed of.

Whereas the basis of recognition of loss is cost or adjusted basis without reference to March 1, 1913 value in the case of the Federal return, for New York purposes if the asset was acquired prior to January 1, 1919 the basis is cost or fair market value as of the latter date, whichever is lower.

Bad Debts: Worthless bonds are classified as capital losses and not as ordinary deductions under both laws. The Federal provision that losses from non-business debts shall be treated as short-term capital loss has no equivalent in the New York law, so bad debts arising out of personal loans may be taken as ordinary deductions in the State return.

Depreciation and Depletion: Whereas the basis for depreciation and depletion as to property acquired prior to that date is fair market value at March 1, 1913 for

Federal tax purposes, the fair market value at January 1, 1919 is the basis used for State tax with respect to property acquired prior thereto.

Amortization of War Facilities: Whereas amortization of war facilities allowable under Section 124 of the Code is also allowed for State purposes, the State Tax Commission has announced that amortization recomputed on the shortened period, based on the termination of the emergency period by the President as of September 29, 1945, and as to which a tentative adjustment has been made (Form 1140), will not be allowed for State tax purposes until the Federal returns, revised to give effect to such amortization, have been examined and approved by the Treasury.

Life Insurance: A deduction allowed for State and not Federal tax purposes, and one which is often overlooked, relates to the life insurance premiums paid on any life insurance or endowment policy upon the life of the taxpayer not in excess of $150. Where an employee, under a company group insurance plan, pays a part of the premium such payment should be included in the deduction claimed by him in his personal return.

Contributions: The 15% limitation on charitable contributions for Federal purposes is now computed on the adjusted gross income, i.e. income before applying other than business deductions shown on page 3 of the return, whereas for State tax purposes the 15% limitation is applied to net income after applying all deductions except those for (a) contributions and (b) medical expenses (Item 16, page 1, Form 201). It would seem that in order to encourage more or larger contributions of this nature the State might fall in line with the Treasury in this respect since under the present procedure the allowable contributions may be considerably less for State tax purposes where the non-business deductions of the taxpayer are consequential.

Extraordinary Medical Expenses: As in the case of contributions the limitation on these deductions is computed differently under each law. In the Federal return the 5% limitation is applied to the adjusted gross income (Item 6, page 1 of Form 1040) and the deduction is further limited to (a) $2,500 if more than one exemption is claimed or (b) $1,250 if only one exemption is claimed. In the State return the 5% limitation is applied to net income before this deduction (Item 18, page 1, Form 201) and is further limited to (a) $1,500 where husband and wife file a joint return or the head of a family exemption is claimed and (b) $750 in the case of all other individuals. This usually results in a lesser allowance under the State law since the deductions other than business deductions do not reduce the base to which the 5% limitation is applied for Federal purposes.

Optional Standard Deduction, etc.: The $500 special deduction for the blind, the optional standard deduction of $500 in case of income of $5,000 or over and the computation of the tax under the optional tax table (Supplement T) provided under the Federal return have no counterpart in the State law.

Capital Gains and Losses

The distinction between long-term and short-term capital gains and losses under which certain percentages are taken into account depending on the holding period of the property sold and the allowance of $1,000 of a capital loss deduction as a deduction from other income for a five-year period under the Federal law are not followed by the State. In the latter return capital gains and losses are computed separately, net capital losses are deductible from capital gains only and net gains are taxed at ½ the rate imposed on other income instead of 50% of the recognized net gain alternative method followed in the Federal return.

A net capital loss in any taxable year beginning on and after January 1, 1942 may be carried forward and deducted from net capital gains only for the next five years.

In computing the tax on net capital gains no exemption is permitted unless the other net income is less than the personal exemption in which case the amount of exemption unused in computation of the normal tax may be offset against net capital gain.

Basis for Determining Gain or Loss

In place of using the March 1, 1913 value the State law uses January 1, 1919 value or cost, whichever is higher, in determining gain, and cost or fair market value on that date, whichever is lower, in determining loss on the sale of property acquired prior to January 1, 1919. No gain or loss results where the amount realized falls between cost or January 1, 1919 value. As to property acquired subsequent to December 31, 1918, cost or last inventory value is used.

As to property acquired by gift prior to December 31, 1927 (in place of the Federal date December 31, 1920), the basis is fair market value when acquired. As to gifts acquired after December 31, 1927, the basis is the same as it would be to the donor or last preceding owner if not acquiring by gift except that if a loss results the basis used is the former or value at time of gift whichever is lower.

As to property acquired by inheritance, devise or bequest, generally the basis for determining gain or loss is the fair market value at date of death, e.g. the amount reported for estate or inheritance tax purposes.

Personal Exemption and Credit for Dependents

For Federal purposes the exemption is $500 for the taxpayer, $500 for his wife (or her husband) and $500 for each dependent relative. The head of a family classification no longer applies. The status at the end of the year governs as to whether or not individuals are married except where a spouse died during the taxable year. For State purposes a single person or a married person not living with husband or wife during the entire taxable year may claim $1,000; husband and wife living together during the entire taxable year and a person who was head of a family may claim $2,500. If husband and wife file separate returns the exemption may be taken by either or divided in the most advantageous manner.

A $400 exemption may be claimed for each person (other than husband or wife) under 18 years of age, or incapable of self support or in full time attendance at college receiving his or her chief support from the taxpayer.

If the exemption status of the taxpayer changes during the year the exemption is apportioned to the number of months before and after such change.

The exemptions for Estates and Trusts are $1,000 each for State purposes whereas the Federal Code allows $500 to the former and $100 to the latter.

Rates of Tax

Individual Rates: The Federal tentative normal tax rate for 1946 was 3% and the tentative surtax rates applied at graduated rates increasing from 17% on surtax net income not over $2,000 to 88% on surtax net income over $200,000. The total tentative normal and surtax was reduced by 5% to arrive at the final tax.

The New York tentative normal tax rates on net income exclusive of capital gains follow:

	Rate of Tax
$ .01 to $1,000	2%
1,000 to 3,000	3%
3,000 to 5,000	4%
5,000 to 7,000	5%
7,000 to 9,000	6%
All over 9,000	7%

As a result of recent legislation the tax computed at the above rates is subject to a 50% reduction on the total amount of tax due for 1946.

There is no surtax under the State law.

As stated above capital gains and losses are computed separately and the tax on net capital gains is computed at one-half the normal tax rates. This total tax is also reduced by 50% as a result of recent legislation.

Administration

Who Must Make a Return: A New York State return must be filed if the total net income and

net capital gains equals or exceeds (a) $1,000 if single or married and not living with spouse during entire taxable year; (b) $2,500 if married and living with spouse during entire year; (c) the personal exemption allowable if taxpayer was married and living with spouse during only part of year, or if the total gross income and capital gain from all sources is $5,000 or over.

If a taxpayer during the taxable year changes his status from that of resident of New York to nonresident, or from nonresident to resident he must file two returns, one as a resident covering the part of the year during which he was a resident, and one as a person other than a resident covering the part of the year during which he was a nonresident. The exemptions are divided ratably between the two returns according to time. However, if two returns for one taxable year are filed, the taxes due thereon shall not be less than would be payable if the total net income and net capital gain shown by the two returns were included in a single return.

The filing of Withholding Statement Form W-2, or the first page of Form 1040 and calculation of tax under the tax table shown on page 4 (Supplement T), permitted under certain conditions (income less than $5,000 etc.), as an alternative to the completion of pages 1 to 3, inclusive of Form 1040 for reporting net income for Federal tax purposes, can not be followed for State purposes. However Optional Form 200 may be used in place of Form 201 to report income from only compensation as employee, pensions, annuities, dividends, interest, partnership, estates or trusts. It is likely the State law will be amended so that as to returns for 1947 and subsequent years the simplified method of reporting income, allowing deductions and computing tax, permitted for Federal purposes, will be followed to some extent for State purposes.

Filing Date: New York returns for the calendar year 1946 must be filed with the State Tax Commission, Income Tax Bureau, at The Governor Alfred E. Smith State Office Building, Albany 1, New York, or at one of the district offices listed on page 4 of Form 201 on or before April 15, 1947. Returns for any other period must be filed on or before the 15th day of the fourth month following the close of the period.

Dates of Payment: The tax may be paid at one time, when return is filed, or in four instalments, ¼ on filing return, ¼ on or before 3 months, ¼ on or before 6 months and ¼ on or before 9 months after due date of return. Only the last instalment may be less than $5.00.

Period of Limitation: For assessing additional tax the period of limitation is the same under both laws (a) 3 years after return is

filed (b) 5 years if more than 25% of reported income is omitted and (c) no limitation if no return is filed or return filed is false or fraudulent.

Where in any taxable year a deduction is disallowed which would have been allowable in a taxable year not more than five years prior thereto, notwithstanding any other limitation of time, the State Tax Commission may revise the return and resettle the tax for such prior year by allowing such deduction and allow such overpayment as a credit in an amount not in excess of the related assessment in the taxable year.

Refund Claims: Application for revision or refund in a form prescribed by the Tax Commission may be filed within two years from the time of filing the return or if the tax has been recomputed or an assessment made where no return filed, then within one year from time of such recomputation or assessment.

Distinguished Visitors to Fairchild Tropical Garden

The firm has had a continuous interest in the Fairchild Tropical Garden from its inception and has largely helped its growth, particularly the Library and Museum building. General and Mrs. Dwight Eisenhower, who visited Colonel and Mrs. Montgomery and the Garden in January, turned out to be better boosters for the Museum and other features of the Garden than many residents of Florida. General Eisenhower has been an old friend of Colonel Montgomery's since their association in the work of the War Policies Commission in 1931.

Some Income Tax Problems Arising From Real Estate Transactions

By Harry Sonkin
(*Cincinnati Office*)

Since transactions in real property do not occur generally in the ordinary course of events, the income tax effect of such transactions is usually a problem to be considered only at infrequent intervals by most taxpayers. Perhaps because of this infrequency, the problems deserve special consideration and thorough analysis before the transactions are consummated and certainly before the tax course is set.

Sales of Rental Property

Section 117(j) of the Internal Revenue Code, as added by the 1942 Act, provides special treatment for gains or losses upon the sale or exchange of "property used in the trade or business." The quoted expression is defined to mean

> "property used in the trade or business of a character subject to the allowance for depreciation provided in Section 23(1), held for more than six months, and real property used in the trade or business held for more than six months which is not (A) property of a kind which would be properly includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business."

Gains and losses from the sale or exchange of such "property used in the trade or business" are aggregated. If there is a net gain such gain is a long-term capital gain. If there is a net loss such loss is an ordinary loss deductible in full from any income. Involuntary conversions of property, which enter into the computation, are disregarded here for simplicity.

The immediate problem which arose from these provisions was concerned with the treatment of sales of a single rental property. Was such a single rental property considered "property used in the trade or business" and thus subject to full deduction of losses on sales and limited, as to gains, to a twenty-five per cent maximum tax?

If a single rental property was not "used in the trade or business" it was automatically a capital asset and the losses taken into account in the case of an individual would be limited first to fifty per cent of the recognized loss and, further, to the maximum deduction in the year sustained of $1,000 over recognized capital gains, if any. The remaining loss, if any, could be carried over to the five succeeding years and used to the extent of $1,000 in excess of the capital gains in each of those years. Any portion

of the loss not so recovered was not allowable after that time.

The simple difference was that the individual taxpayer, at best, stood to lose the benefit of fifty per cent of the capital loss even if the portion taken into account was fully offset during the six-year period by the annual deduction of $1,000 plus the offset against other capital gains.

In February 1943, the Bureau of Internal Revenue issued a letter stating that the renting of a single piece of real estate does not necessarily constitute a trade or business, and that the sale of property not used in the trade or business, but acquired for income-producing purposes, and used for that purpose until the date of sale, constitutes the sale of a capital asset.

The intent of the letter was clear, but the next question was "How many rental properties are necessary before a taxpayer can be said to be in the trade or business of renting property?"

Early in 1944, the Bureau issued a letter in which it stated that a taxpayer may be said to be engaged in a trade or business if he devotes the major part of his time and attention to his properties and if his *principal* source of income is derived therefrom.

On the basis of these narrow limitations of a "trade or business" the Commissioner has consistently held that losses on sales of rental property which had been converted from residential property and owned by a taxpayer engaged in another trade or business, are losses sustained on the sale of capital assets and thus subject to the capital loss limitations.

Recently, two cases have been decided in the Tax Court on this issue, and in both instances, the Court has held with the taxpayer.

In *Leland Hazard v. Com'r* (7 T.C. #44) the Tax Court ruled, without dissent, that the loss sustained in the following circumstances was an ordinary loss, not a capital loss as contended by the Commissioner.

The taxpayer, an attorney engaged in general practice in Kansas City, Missouri, had acquired a residential property in that city in 1930. The residence was occupied by the taxpayer until 1939 when he moved to Pittsburgh. The residence in Kansas City was rented continuously from that time until it was sold in 1943.

The Court noted that prior to the amendment of Section 117 by the 1942 Act, the established rule was that residential improvements on real estate converted to income-producing property are "property used in the trade or business of the taxpayer" regardless of whether or not he may be engaged in another trade or business.

The Court concluded that the property here in question was not a capital asset at the time of sale but was used in a trade or business, and hence the taxpayer was entitled to

deduct the loss as an ordinary loss under Section 23(e)(1).

In *M. T. Thomas* (T. C. Memo. 9-17-46) the facts were very similar to the *Hazard* case and the Court held similarly for the taxpayer.

The point now appears to be settled. The Commissioner recently has acquiesced in the *Hazard* decision and taxpayers should file claims for refunds for prior years in which the issue has been resolved against them. Losses arising hereafter from these transactions should, of course, be claimed as ordinary losses.

Net Operating Loss Carry-Over or Carry-Back

Should losses of the type discussed above be included in determining the taxpayer's net operating loss carry-over or carry-back?

In I. T. 3711 (C. B. 1945, 162) the Bureau held that even if a taxpayer might qualify his property as being used in the trade or business of owning and operating real estate for income-producing purposes and, as such, the losses on sale would then be deductible, such losses would not be properly includible in a net operating loss carry-over or carry-back. The reasoning advanced by the Bureau in support of this interpretation was that the net operating loss carry-over or carry-back is to comprise losses incurred only in the regular trade or business of the taxpayer and that since the taxpayer is engaged in the trade or business of owning and operating, the losses did not arise from the operation of the trade or business, regularly carried on, but from the "disposition of assets used therein."

By this fine distinction, the Treasury Department apparently intends to limit the carry-over or carry-back privileges to only those taxpayers holding property for sale as dealers. Whether or not the difference drawn by the Treasury Department will stand is a question to be resolved. There is serious question as to its validity.

Who Is a Dealer

The question of who is a dealer is of importance from at least two points. A dealer is not granted the benefits of Section 117(j) relating to gains on sales, since the property is held for sale to customers, and on the other hand, a dealer, being excluded from Section 112(b)(1), may claim losses arising from exchange of property for "like kind." In *Winters Holding Corporation*, (31 B.T.A. 1185) the Board ruled on this interesting question. The Board said in part, "In this inquiry the regularity or persistence with which the asserted business purpose is pursued is important. If the transactions are infrequent, casual or isolated, the consequence of occasional convenience rather than the result of persistent endeavor, the corporation can scarcely be said to be engaged in the business in

question. In other words, the test is pragmatic rather than theoretical. In this connection, attention is attracted to the fact that from 1920 to 1928, the company was inactive in the matter of purchases and sales and to the further fact that in 1929 only two properties were disposed of * * *."

The Board held that the taxpayer was not a dealer, in part on the facts recited above.

In *Burkhard Investment Co. v. U. S.:* (CCA-9) (100 Fed. (2d) 642) it was held that a family corporation dealing in its own property exclusively, with no income from commissions on brokerage or sales was not a dealer but held real estate for productive use in the trade or business or for investment and not primarily for sale.

The courts have apparently and properly placed emphasis on the broad circumstances under which the taxpayer operates rather than on the individual transactions themselves. "Are sales made as a regular part of the operation of the business; was the property acquired for resale or did the sale result from outside influences such as change in trading areas, market values, etc.; and did the taxpayer act as a broker in the properties of others?"

The first two questions are proper but it does not seem that the fact that a taxpayer is not licensed as a real estate broker should have any bearing on whether or not he may be a dealer in his own properties.

Losses on Demolition

The regulation dealing with this question seems in itself to be clear.

> "Loss due to the voluntary removal or demolition of old buildings, the scrapping of old machinery, equipment, etc., incident to renewal and replacements is deductible from gross income. When a taxpayer buys real estate upon which is located a building, which he proceeds to raze with a view to erecting thereon another building, it will be considered that the taxpayer has sustained no deductible loss by reason of the demolition of the old building, and no deductible expense on account of the cost of such removal, the value of the real estate, exclusive of old improvements, being presumably equal to the purchase price of the land and building, plus the cost of removing the useless building." (Sec. 29.23(e)-2, Reg. 111.)

There is no mistaking the meaning of the first sentence of the above quoted regulation. The underlying theory of the second sentence is based on sound accounting and business practice and taxpayers will generally have no quarrel with it *if* it relates to an intent to demolish determined upon at acquisition.

The long line of cases on demolition losses is summarized in Montgomery's *Federal Taxes—Corporations and Partnerships*, 1946-47, Vol. I, page 660, into three classifications as follows:

(1) If the taxpayer intends to demolish the building at the time of acquisition, no loss is allowable and the cost becomes part of the cost of the land.

(2) If the taxpayer decides, after acquisition, to demolish the building and the

demolition is not in connection with new construction, loss is allowable.

(3) If the taxpayer decides to demolish the building after acquisition and in connection with new construction, no loss is allowable and the cost of the old building becomes part of the cost of the new.

The decisions that have developed (3) do not seem well-founded and they appear to be in direct conflict with the first sentence of Sec. 29.23(e)-2, Reg. 111, which is of long standing.

As to the Commissioner's position with respect to (3), it is probably well stated by the following illustration:

A taxpayer engaged in the erection of a modern office building covering an entire city block, purchased a single building to complete its holdings in that area. It was contemplated that the purchased property would be integrated into the surrounding new structure, but because the property was being erected on a hill, it was found that the floor levels of the acquired property could not be integrated into the new building. The taxpayer secured a ruling in which the Commissioner stated that under these circumstances where the decision to demolish was determined after acquisition, the loss resulting from such demolition (even though in connection with new construction) was deductible.

The buildings surrounding this single acquired building, all of which were demolished, had been owned for at least twenty years, and under the same theory, the loss on demolition would be likewise deductible.

The Tax Court is not yet, however, in entire agreement with the Commissioner on this point.

In *Phipps Estates v. Com'r:* (5 T.C. 964), the taxpayer, who had owned the property for many years, demolished old property in loss years in connection with new construction. The demolition losses would have been of no tax benefit under these conditions, and the taxpayer included such losses as a part of the cost of the new building. The Commissioner contended that the losses were deductible in the years of demolition, but the Tax Court held with the taxpayer.

The decision is clearly not in accord with the regulation and the Commissioner has since issued a notice of nonacquiescence.

Since the Courts and the Commissioner are at loggerheads on the question, it would perhaps be as well to provide specifically in the Code that taxpayer have an option in these circumstances to either deduct such losses or include them as part of the cost of new buildings.

The L. R. B. & M. Journal

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The purpose of this journal is to communicate to every member of the staff and office plans and accomplishments of the firm; to provide a medium for the exchange of suggestions and ideas for improvement; to encourage and maintain a proper spirit of cooperation and interest, and to help in the solution of common problems.

Quarter Century Club

Mr. Fillmore R. Bloomburg, a member of our Philadelphia staff, was recently presented with an appropriately engraved gold watch to commemorate twenty-five years of service with the firm, having been employed on July 5, 1921.

Mr. Bloomburg, a member of the United States Naval Reserve, left on April 5, 1941, for service in the Bureau of Supplies & Accounts of the Navy Department, and returned to our staff on September 3, 1946. During his period of service with the USNR, Mr. Bloomburg advanced from the rank of Lieutenant to that of Captain.

Notes

We record with sorrow the deaths of three members of our organization: Mr. Arthur W. Kettenburg and Mr. Louis Tissot, both of our New York staff, and Mr. Donald H. Kuhl, of our Detroit staff.

Mr. Kettenburg died suddenly of a heart attack on February 23, 1947, while shoveling snow from the walks in front of his home. Although only 47 years of age, he had suffered from heart trouble for some years, and apparently the exertion was too much for his weakened heart to stand. Continuously associated with our New York office since December, 1924, his passing removes one who was liked and respected by clients and his fellow associates for the quiet and efficient manner in which he undertook his daily tasks.

Mr. Tissot, who had been critically ill, died on February 24, 1947. He first joined the New York staff in 1937 and was associated with that office almost continuously to the time of his death. A diligent worker and possessed of a pleasing personality, he will be missed by his many friends.

"Don" Kuhl met his death in an automobile accident on Sunday, February 9, 1947. He entered the Detroit office in 1943 as an office boy, and left after a year to join the Navy. He served on an LST in the Pacific area, and returned to the staff in July, 1946, as a junior accountant. He was extremely popular with the men on the staff, and had good prospects for advancement in the profession. His untimely death was a shock to all who knew him.

Our sympathy goes to the members of the respective families in their bereavement.

Commendation

Colonel Stephen B. Ives, formerly manager of our Atlanta office, recently received the following resolution of commendation from the War Contracts Price Adjustment Board, Washington, D. C.:

"Whereas Colonel Stephen B. Ives, by his sense of fairness, his high ethical principles, and his outstanding professional ability, has rendered unselfish and invaluable services to the War Contracts Price Adjustment Board, to the several Departments represented on it, and to the people of the United States, and has contributed materially to raising and maintaining at a high level the standards as well as the techniques of all the Price Adjustment Boards, and

"Whereas the Chairman has announced the resignation of Colonel Ives as a member of the War Department Price Adjustment Board and his separation from the military service, in order to accept new responsibility with the Government, therefore,

"Be it resolved that this Board permanently record in its minutes its appreciation to Colonel Ives for the services he has

rendered, and that, as an expression of the esteem in which Colonel Ives is held by the members of the Board, each member shall sign a copy of this resolution, and the Chairman is authorized and directed to present that copy to Colonel Ives."

Captain R. S. McIver, formerly of our Philadelphia staff, recently received the Navy commendation ribbon, with the following citation:

"For outstanding performance of duty at Secretary of the Munitions Assignments Committee (Navy), from February 1942, to November 1943. Meeting with unusual resourcefulness and executive ability his many responsibilities throughout this critical period, Captain McIver rendered invaluable service in organizing and operating the Munitions Assignments Committee (Navy). Skillfully handling the administrative details of secret negotiations, he aided in preparing recommendations for the assignment of Naval munitions which conformed with the strategic directives of the Combined Chiefs of Staff. Captain McIver's thorough appraisal of United Nations supply requirements during the early stages of war was an important factor in the successful functioning of the Munitions Assignments Board in Washington, and his initiative, judgment and devotion to duty reflect great credit upon himself and the United States Naval Service."

Captain McIver has returned to his duties as vice-president and treasurer of Taylor Fibre Company, Norristown, Pa.

The appointment of Mr. Schaffer as a member of its five-man Panel on Accounting Matters has been announced by the United States Atomic Energy Commission.

The Panel is to act in an advisory capacity to the Commission with respect to the appointment of a controller and also as to a system of accounting control for the funds of the Commission.

Mr. Ross is chairman of a committee of the American Institute of Accountants which is engaged in a research project on the history of accounting.

On March 25 Mr. H. E. Bischoff, of our New York staff, addressed a state taxation meeting of the New York State Society of Certified Public Accountants on "A Comparison of The Principal Features of The Federal and New York State Personal Income Taxes." Mr. Bischoff's paper appears in this issue of the JOURNAL.

Mr. Jennings has been reappointed as a member of the Committee on Auditing Procedure of the American Institute of Accountants.

Mr. J. Wesley Huss, of our Louisville staff, recently addressed the Louisville Control of the Controllers Institute of America on the subject "Recent Changes in the Interpretation of the Internal Revenue Code."

Mr. Huss also recently addressed the Kentucky Society of Certified Public Accountants on "Internal Control."

Mr. Harry Sonkin, of our Cincinnati staff, is the author of an article entitled "Some Observations with Respect to Section 102," which appeared in the Spring number of the *Ohio Certified Public Accountant.*

Mr. Floyd P. Karg, of our San Francisco staff, prepared the section on stock brokerage which appeared in a new book on specialized accounting subjects published by Dean Strain of Golden Gate College.

Mr. C. J. McDowell and Miss Margaret McKee, of our San Francisco staff, have passed the California C. P. A. examinations.

The following members of our organization have been admitted to membership in the American Institute of Accountants:

Frederick W. Donovan, *Boston*
Cyril P. Gamber, *Philadelphia*
Harold J. Olson, *New York*
William L. Regan, *Philadelphia*
Maurice E. Straley, *New York*

Mr. Gerald B. Davis, Mr. Harry E. Dieter and Mr. John G. Swanhaus, all of our New York staff, have passed the New York C. P. A. examinations.

Mr. William B. Millman, of our New York staff, has passed the New Jersey C. P. A. examinations.

Lybrand, Ross Bros. & Montgomery

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Baltimore 2	First National Bank Building
Washington 5	Investment Building
Pittsburgh 22	Union Bank Building
Detroit 26	Book Building
Cleveland 15	Midland Building
Cincinnati 2	Carew Tower
Louisville 2	Heyburn Building
Saint Louis 1	411 North Seventh Street
Rockford, Ill.	321 West State Street
Atlanta 3	Healey Building
Dallas 1	First National Bank Building
Houston 2	Shell Building
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